

KJI NEWSLETTER

March 2004

This newsletter is published to fully inform the magistrates of Kosovo on the activities of the KJI. This publication is distributed to judges and prosecutors throughout Kosovo. The Monthly KJI Newsletter features articles from KJI Staff relating to issues of interest to judges and prosecutors working in Kosovo. KJI will invite this year magistrates to contribute to this Newsletter and to publish their own articles or reports.

Study visits and internships abroad Revue of KJI activities in 2003

Additionally to the regular training offered by KJI, are study trips and internships. These programmes widen the horizon of participants, convey experience, strengthen the friendly co-operation between colleagues of the same and/ or other ethnic groups and the feeling of belonging together to the Judiciary system of Kosovo, enhance skills, and provide experience.

These activities have been mostly performed in West European countries with long juridical tradition as France, Switzerland, Germany, but as well in states belonging to the former socialistic system, having been transformed to democratic entities ruled by law and suitable to serve as a model for the legal development in Kosovo. Those are for instance Slovenia, Croatia and Bulgaria. In 2003, KJI was able to conduct study visits to Slovenia,

Switzerland and Germany, while two internships were organized in Konstanz and Gera in Germany.

Almost all colleagues in Kosovo are very much interested in training programs abroad. The capacities of KJI, however, are limited. At least 10 colleagues may join a study trip and 3 at one time an internship. Therefore we try to spread the experience of those who participated, to others within meetings. Another way to transmit this information is to publish reports of the participants in KJI Newsletter. We are aware that this publication can only transfer some impression and does not replace the own participation. But at least it might cause wanderlust! Let's see...

Dr. Horst Proetel, Judicial Trainer at KJI



Report on a study visit in Switzerland – August 2003

The Kosovo Judicial Institute in cooperation with the Swiss Prosecutor's Federal office organized a study trip for the Kosovo Judges and Prosecutors in Switzerland from 23.08 until 30.08.2003.

Before selecting the Judges and Prosecutors who would travel on this study trip we had a meeting with Mr. Horst Protel, Judicial trainer at KJI, where we were briefed about the agenda and conditions of this trip.

On reaching Switzerland on the afternoon of 23 August, we the Kosovo group under the supervision of Dr. Horst Proetel, were located into an hotel and since we arrived on a weekend day, we used the opportunity to look at the city of Bern more closely.

On Monday 25 08 2003, according to the agenda of the study trip, we met Mr. FABRI, Deputy Federal Prosecutor of Switzerland who directed us to the Swiss Federal Prosecutor's office, where we met the Swiss Federal Prosecutor in person. After the introduction, he informed us on the study program, and also about the competencies of the Swiss Federal Prosecutor's office concerning the organization of this office activities and the cooperation between Courts and police. It was also discussed about the organized crime and the severe measures, which are taken to prevent these offences, especially about the

cooperation between the above mentioned bodies for prosecution of these offences. During the day we were also briefed about the competencies of the Federal Prosecutor, on protecting the State and ensuring the rights of its people, prosecution of issues which violate the territorial integrity of the state, pledges, forgery of money, corruption etc. We were briefed about the organized crime and there was a special focus on trafficking of human beings and forgery. There was also a discussion on the Swiss Federal Prosecutors office competencies to provide juridical assistance to other countries. The federal law of Switzerland foresees some provisions for international affairs; however the characteristic thing is that the state of Switzerland provides juridical assistance to other countries even when it is not foreseen by the Federal Law. On the first day of the study trip there was a detailed discussion regarding the juridical system of the state and the judicial organization in the 26 existing Cantons in Switzerland. According to the Swiss Constitution, the promulgation of laws is a Federal competence, whilst the organization of courts and the selection of judges in the Cantons is under the competence of Cantons. The courts in Cantons are organized in two instances. If there are conflicts between the different courts in Cantons, then it is the Federal Court who decides in these matters.



On our second day in Bern we heard a very interesting speech from the specialist of international affairs for juridical assistance: Mr. Beat Freji, especially the relationship between two states, there were a lot of discussions in this regard. As we mentioned before, even though there are no international agreements, the State of Switzerland cooperates with other states even though this is not foreseen by the Federative Law, especially on the cases of extradition. It is characteristic that there has to be a clarification of the circumstances as why the person from other state is wanted for, the state does not cooperate when cases are of political or military nature. There is cooperation for fiscal issues but not for simple issues. The request for juridical assistance should be official and in a written form. It is worthwhile to mention that our group was recommended that our Courts and Prosecutor's offices may require from Switzerland to offer a juridical assistance even though there is no such an agreement between the two states. Based on our circumstances they enabled us to use the juridical assistance through the Internet. Annually there are around three thousand requests for juridical assistance in Switzerland.

It was also discussed about the phenomena of extraditing people, and the circumstances of obliging the state to extradite the perpetrators. The competencies to decide in this regard in Switzerland belong to the Federation not the Canton. This Institution has a legal contract for extraditing these people and the number of the extraditing request for such annually, is

around nine thousand. There was a special attention paid to the priority of extradition.

During the afternoon we had the honor to hear the speech of Mr. Thomas WALTHER, from the Federal Crime Police. The gentleman explained in details the organization of the Federal Police, its competencies and their cooperation with prosecutors and Courts.

The third day of study began with a speech on the organization of the protection system, the speech was about defense attorneys-lawyers, their competencies and obligations. In order to become a lawyer in Switzerland you should fulfill professional and personal criterias. So the lawyer should have a clean background, should not be sentenced and should be independent and not obey someone else's orders. The State codifies what is the obliged defense that the perpetrator should receive from the state, they are two: when the foreseen sentence is longer than one year and when the perpetrator is ill or incapable to defend himself/herself. On the third day there was an inspiring meeting in the Court of Bern, on both criminal and civil fields. Kristina Shell is a high merited Criminal Judge in the city of Bern, she received a medal for her good work on the same day that we went there, and the Kosovo group, which participated on this occasion, was maximally honored by the hosts. Ms. Shell then informed the Kosovo group on the work of the court in Bern and its competencies for five hundred thousand inhabitants covered by this court.



There were eight Civil and nine Criminal Judges who worked in this Court. The Criminal and Civil Procedures were identical to our judicial procedures, (preparation of the hearing supervision and development of the main hearing) but the technical work was much more advanced than ours. The computers were connected to a network, from the office of reception of cases, up to the judge of the case. Another very fascinating thing for us was, when we saw the main library of the Court and personal libraries of Judges, and the way they archived cases. The criminal procedure in the Municipal Court of Bern was conducted in an ordinary and special procedure. This procedure also covered the minor offences. Another characteristic in the organizing process of this court was that criminal and civil judges compiled the working schedule themselves. Regarding the civil field we learnt that a huge number of cases lodged in this court are resolved by agreement between the parties in dispute. Also the cooperation with other courts is very good.

During the day there was an interesting speech of Mr. Stefan DIENBERG lawyer from Zurich, regarding the Institution for protection of witnesses and victims, this issue is codified in the Law on victims' protection. The victims' protection subject, arose a special interest for the Kosovar colleagues and there was a very fruitful conversation, especially on the life protection subject which according to the Swiss Federal Law is presented in two manners: The protection of life within the procedure (when the identity of the witness is known) and protection outside of

procedure (when the identity is changed), all of this is grounded on the right to life.

Day four provided us with a lot of knowledge on Forensics matters. We were very warmly expected at the Forensics Institution by the Director of this Institution. Afterwards, we visited the building and the professional laboratories. We were fascinated with their work and their equipment, (different machines) that they possessed, especially the equipment for drug analyses and the methods for verifying the identity of drug abusers. In the anatomic field, the Kosovo group was also enabled to participate in abduction where, the victim's cause of death was specified. The legal pathologist explained in details the ways of verifying the reasons of death, there was also a speech which introduced us more closely to the professionalism of the Institute regarding the collection of evidence on both murder and accidental deaths.

On the fifth day as a last day, there were some final discussions and a cocktail for all the participants of the study trip.

The impression of the group is that the study trip was of extraordinarily high level, organized in a professional manner, every Institution of the judicial system in Switzerland enabled us to get detailed information, during the discussion the speakers have given everything from their professionalism to show clear picture of their work. During the day we visited the central prison in Bern, the Kosovo group was informed



regarding the existing conditions of people who are sentenced, their rights and obligations. The director of prison enabled us to visit the building where the prisoners are being held, visit their cells, work shops and at the end there was another occasional cocktail. The day became even more attractive with the surprise from the host and that was a visit to the Police Computer Center in the city of Tuna, and a visit to the Training Center for dogs catching the perpetrators. There was a joint lunch from the host in Tuna City where we discussed about the events of the day. The farewell meeting was emotional. The Kosovo Group is very thankful to the host for organizing this study trip. Besides the official meetings there were joint lunches and dinners organized by the hosts in the most attractive places of

the city of Bern and everywhere else that we appeared, we were specially hosted. The group would like to especially thank the Federal Prosecutor of Switzerland, also his deputy Mr. FABRI, who was always near us. He even accompanied us when he had some health problems and we are especially thankful to him for that.

Our thanks also go to Mr. Horst PROETEL who was maximally engaged to make this trip better and learn more from it.

The group has returned to Kosovo with extraordinary impressions for the experience taken there.

Respectfully on behalf of the group.

Judge Biljana Rexhiqi

Report on an internship in Germany – March 2003

According to the program of this internship from 10th March until 28th march 2003, we have attended the main trials of the Municipal and District Courts of Konstanz, in both civil and criminal Issues. We have followed the main trials of some grievous criminal acts before the District Court, and thereafter we participated in the main trials of the Municipal Court, respectively the Family Court in cases concerning the solution of disputes between spouses respectfully in resolving the property disputes of movable items. We have also attended a main trial in one of the cases of the District Court for Juvenile Offenders,

and a civil hearing regarding the cases of debt, damage compensations etc.

Regarding the competencies of the Municipal and District Courts, they are almost identical to the working system of the Courts in our country. Municipal Courts adjudicate criminal offences which are punishable up to 4 years, whereas, the cases adjudicated by the District Courts concern cases which are punishable for more than 4 years. The court panel of the Municipal Court is composed of one professional and two lay judges. The Court that deals with family disputes is an independent court within the Municipal Court and the



cases are adjudicated by an individual judge. Civil cases of more than 5000 Euros are adjudicated by an individual judge at the District Courts, whilst the criminal cases for the imprisonment punishment of more than four years are adjudicated by two professional and two or respectively three lay judges

It is worthwhile to point out that when deciding on the appeals lodged before the second instance court, the decision should be rendered by the court panel composed of one professional and two lay judges, specific thing is comparing it to our courts where is rendered by three professional judges.

These Courts have a very good working organization, however if we compare the number of citizens on the territory, the number of cases, and the number of judges we can see the reason why the judicial system is more efficient there. However, despite this fact there is some prolongation of procedure as well, for objective or subjective reasons, some cases are prolonged for years. A great relief for the judges is also the organization of the working system specially the designation of the judges in the narrow field, which influences the increasing of quality of the working effectiveness. It is worth to stress out the good functioning of the German Judicial system according to our evaluation that is influenced by good cooperation between all stakeholders, Police, Prosecution, Jurisdiction, and other competent bodies, as well the administrative personnel as the record keepers, clerks, technical support as the telephones, computers, typing

machines, photocopy, fax, availability and access to the legal material such as legislation, jurisprudence and all comments regarding this issue.

Therefore from everything that was mentioned above, we can conclude that our legal system, even considering the fact that our country has been in war not a long time ago and has ended up with a very poor economy, until now has achieved good results, comparing the number of the judges and prosecutors. Since the primary role for the development of our country is played by the judiciary system, and for its efficient development, it should flow step by step from other Bodies or Institutions which directly or indirectly influence the development of the effectiveness for the judicial system and bodies.

Therefore, the priority issue for our judicial system is that we should point out the lack of local judges and prosecutors; the payment issue is a grave obstacle for finding the appropriate persons fulfilling these working positions. As long as it will be understandable that the only obstacle is the financial state, it should be pointed out the purpose for securing an independent judiciary and prosecution as well as qualified judiciary, economic material and conditions for the holders of these functions, and a more efficient organization of the judicial system must be secured in order to guarantee the independence and rightful functioning of these bodies.

Isa Kelmendi
District Judge in Peje/Pec



Project activities March 2004

- Round Table Discussion in Gjilani/Gnjilane on the provisional criminal procedure code of Kosovo
- Seminar on the pre-trial proceedings under the provisional criminal procedure code of Kosovo
- Seminar on Case Management and Public Prosecutor / Police relationship
- Seminar on Civil Law - Labour Law
- Seminar on the pre-trial proceedings under the provisional criminal procedure code of Kosovo

Round Table Discussion on the PCPCK – Gjilani/Gnjilane Region

The KJI will continue its field training programmes in Gjilani/Gnjilane on 3 and 4 March with a Round Table Discussion on the new criminal procedure Code. This specific legal education programme will be organised with the collaboration of the President of Gjilani/Gnjilane District Court. All criminal law judges and prosecutors from the region, who will be willing to attend this session' will gather in order to discuss about new procedural aspects of the criminal procedure: the competencies and decisions of the pre-trial judge, his interaction with the prosecutor, the indictment and its confirmation, the main hearing according to the new criminal procedure code. The second day of this RTD will only consist of discussions related to practical and specific procedural details. This Round Table Discussion will be moderated by a KJI judicial trainer and three judges from the Supreme Court will participate as speakers.

Seminar on the pre-trial proceedings under the PCPCK

The Council of Europe will organize with the KJI on 9 and 10 March a two-day seminar on the pre-trial phase under the provisional criminal procedure code and its compatibility with the European Convention of Human Rights. Some experts from the Office of Legal Adviser (UNMIK), the Council of Europe, the European Court of Human Rights, as well as a judge from the High Court of Justice in Albania and a KJI judicial trainer will deal with the main reforms of pre-trial proceedings introduced by the PCPCK, such as the interrelation among judicial police, public prosecutor and pre-trial judge, the deprivation of liberty of a person under investigation and the indictment. All presentations will be illustrated by an overview of the relevant case law of the European Court of Human Rights. A practical exercise based on a case-study related to the indictment will be presented and discussed by the participants on the second day.



Seminar on Case Management and Public Prosecutor/Police relationship

The United States Department of Justice will organize with the Kosovo Judicial Institute a training session on practical issues contained in the new criminal procedure code. This seminar will take place in KJI's premises on 16 March and will be repeated on 17 March for prosecutors coming from all over Kosovo. Judicial police instructors and trainers will attend this seminar as observers in order to improve the coordination between the Judiciary and the Police and to relay some information during the training of the judicial police. This legal education program will emphasize the practical aspects of utilizing the covert measures during the investigative procedure: two case studies on sexual assault and organized crime (conspiracy) will be presented to the participants. The fact scenarios will be prepared in accordance with the provisions of the new codes. Two other sub issues will be discussed during this seminar: the establishment of working relations with institutions overseas and management issues between the police and the prosecutor: conflict resolution, protocols, supervision process.

Seminar on Labour Law

The KJI will offer on 18 March a training session for civil law judges, focusing on Labour Law. The topics will deal with the rights and obligations in the labor relationship – general aspects and courts experience - , the establishment of working relationship in the actual situation of Kosovo, the legal defense of employees before the Court in case of suspension and dismissal from work. Three local judges and one KJI judicial trainer will contribute to this seminar, organized at the attention of civil law judges only.

Seminar on the pre-trial proceedings under the PCPCK

The KJI, together with the Council of Europe will offer a two-day seminar on 30 and 31 March, on new criminal procedural mechanisms introduced by the new code. This seminar, opened to criminal law judges, will intend to focus on measures related to the presence and security of the alleged defendant and witnesses/victims, other specific investigative actions such as search, seizure, confiscation, as well as the right to an effective counsel, covert investigative measures and admissibility of evidence. These presentations will be illustrated by relevant case law of the European Court of Human Rights.

Round Table Discussion on the PCPCK – Prizren/Prizren

The KJI will reiterate a field training programmes in Prizren/Prizren on 25 and 26 March with a Round Table Discussion on the new criminal procedure Code. The topics and debates presented in Peje/Pec and Gjilani/Gnjilane, will also be discussed among the criminal law judges and prosecutors coming from Prizren/Prizren region. This Round Table Discussion will be moderated by a KJI judicial trainer and three judges from the Supreme Court will be present as speakers.

